



DEPARTMENT OF HEALTH & HUMAN SERVICES

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TO : Richard Price, Chief
Legal Liaison/Policy Review Branch
Division of Legislation and Regulations

FROM : Barbara Hudson, Attorney
Office of the General Counsel

SUBJECT : Updated of June 30, 1993 Legal Opinion - Request
for Opinion (RFO) 94-137

In your request, you ask me to update my June 30, 1993 opinion in light of the current language in the Indian Health Service (IHS) appropriation act. In my June 30 memorandum, I addressed the question:

May IHS deobligate prior year funds, e.g., FY 1993, from a Title I contract under the Indian Self Determination Act (ISDA) and reobligate these funds in a subsequent fiscal year, e.g., FY 1994, to a Title III compact?

After researching Federal appropriation law, I concluded that the answer was no. I indicated that "funds deobligated from an expired period of availability may not be reobligated in the current or a subsequent fiscal year unless Congress has expressly provided such reobligation authority". (Memorandum of June 30, 1993 at page 2.) Because, Congress had not provided IHS with such authority, I concluded that the answer to IHS's question as no.

Since the date of that legal opinion, Congress has expressly provided IHS with limited deobligation/reobligation authority. The FY 1995 appropriation act states,

[N]otwithstanding any other provision of law, funds previously or herein made available to a tribe or tribal organization through a contract, grant or agreement authorized by title I of the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450), may be deobligated and reobligated to a self-governance funding agreement under title III of the Indian Self-Determination and Education Assistance Act of 1975 and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation.

(Department of the Interior and Related Agencies Appropriations, 1995, Pub. L. 103-332, 108 Stat. 2499, 2529 (1994).) Based on this language, IHS now may deobligate prior year funds from a Title I instrument and reobligate those funds in the current or in a subsequent fiscal year to a Title III self-governance funding agreement. The appropriation act gives IHS a limited exception to the general rule that funds deobligated from an expired period of availability may not be reobligated in the current or a subsequent fiscal year. Please note that the conditions of this limited exception are:

1. deobligation from a Title I instrument, e.g., contract, grant, or agreement; and
2. reobligation to a Title III self-governance funding agreement.

Both these conditions must be met to take advantage of the exception to the general rule.

I hope this information is helpful to you. If you have further questions, please feel to give me a call at 301-443-0406.

Barbara Hudson